

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

July 22, 2010

- I. **CALL TO ORDER** – The meeting was called to order at 1:34 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Patrick Brewer; Mike Cravens; Ed Holmes; Mike Owens; Carolyn Richardson, Chair; and William Wilson. Absent were Marie Copeland, Derek Paulsen, and Lynn Roche-Phillips.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Traci Wade; Tom Martin; Cheryl Gallt; and Stephanie Cunningham. Other staff members present were Rochelle Boland, Department of Law; Steve Parker, Division of Engineering; Tim Queary, Urban Forester; and Stephen Harrod, Division of Building Inspection.

- II. **APPROVAL OF MINUTES** – Prior Planning Commission meeting minutes of May 13, 2010; June 10, 2010; June 24, 2010; and July 8, 2010, were presented for the Commission's consideration. Mr. Owens stated that, in the minutes of the June 24 meeting, his vote on DP 2008-137 was noted incorrectly, as he had voted against the motion for approval of that development plan. He asked that the minutes of that meeting be changed to reflect that correction.

Action: A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 6-0 (Copeland, Paulsen, and Roche-Phillips absent) to approve the minutes of the May 13, June 10, June 24, and July 8 minutes, with the change to the June 24 minutes as noted by Mr. Owens.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **MAP PROPERTY MANAGEMENT ZONING MAP AMENDMENT & WALNUT HILL SUBDIVISION ZONING DEVELOPMENT PLAN**

- a. **MAR 2010-3: MAP PROPERTY MANAGEMENT (8/26/10)*** - petition for a zone map amendment from a Single Family Residential (R-1B) zone to a Highway Service Business (B-3) zone with conditions, for 0.509 net (0.778 gross) acre, for property located at 2000 Liberty Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 2) recommends Medium Density Residential (MD) future land use for the subject property. The petitioner proposes constructing a five-bay car washing establishment and associated off-street parking for the Lexus dealership across Liberty Road.

The Zoning Committee Recommended: **Referral to the full Commission.**

The Staff Recommended: **Disapproval**, for the following reasons:

1. The requested rezoning to a Highway Service Business (B-3) zone, even with conditional zoning restrictions, cannot be found to be in agreement with the 2007 Comprehensive Plan, which recommends Medium Density Residential (MD) land use for the subject property. Medium Density use is defined as 5-10 dwelling units per net acre.
2. The B-3 zone is not appropriate for the subject property for the following reasons:
 - a. Liberty Road is a two-lane minor arterial roadway at this location, that begins transitioning to a five-lane cross-section at the intersection of Liberty Road and New Circle Road. The left-hand turning movement onto Downs Avenue, and the right-hand turn with a quick left turn to exit the site and return to the Lexus dealership as proposed by the applicant, in combination with existing stacking problems at the intersection to the east, would exacerbate an existing traffic issue.
 - b. Several single family residences still exist along Downs Avenue and to the west along Liberty Road. These adjacent and nearby residentially zoned properties could be significantly impacted by expanding the commercial zoning in this area, which would permit the proposed car washing establishment.
 - c. In this instance, the existing water storage tanks to the east, as well as the mature landscape buffer along the property line, create an appropriate and well-established transition from the business uses to the residential uses along Liberty Road.
3. There have been no significant unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in early 2007 that would support B-3 zoning for the subject property.

- b. **ZDP 2010-35: WALNUT HILL SUBDIVISION (8/26/10)***- located at 2000 Liberty Road. **(Vision Engineering)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory information.

* - Denotes date by which Commission must either approve or disapprove request.

6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Denote final record plat names for adjoining properties.
8. Denote construction access location.
9. Denote proposed height of building.
10. Denote storm water detention area and/or controls.
11. Denote existing and proposed utility easements on plan.
12. Discuss access and improvements to Liberty Road.
13. Discuss employee parking and on-site parking for vehicles to be serviced.

Petitioner Representation: Christine Westover, attorney, was present representing the petitioner. She requested a one-month postponement of this item.

Action: A motion was made by Mr. Owens, seconded by Mr. Brewer, and carried 6-0 (Copeland, Paulsen and Roche-Phillips absent) to postpone MAR 2010-3 to the August 26, 2010, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, July 1, 2010, at 8:30 a.m. The meeting was attended by Commission members: Mike Cravens, Mike Owens, Carolyn Richardson, and Marie Copeland. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jim Gallimore, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Jimmy Emmons, Denise Bullock, and Barbara Rackers, as well as Captain Charles Bowen, Division of Fire & Emergency Services; and Bob Carpenter and Stephen Harrod, Division of Building Inspection. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.
2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, July 1, 2010, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Patrick Brewer, Carolyn Richardson, and Lynn Roche-Phillips. Staff members in attendance were Bill Sallee, Traci Wade, Barbara Rackers, Tom Martin and Stephanie Cunningham, as well as Rochelle Boland, Department of Law. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

~~Abbreviated public hearings will be held on petitions meeting the following criteria:~~

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

~~The procedure for these hearings is as follows:~~

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. **BRIGHTON ANIMAL CLINIC, LLC, ZONING MAP AMENDMENT & MAN O' WAR DEVELOPMENT, UNIT 2, SECTION 1, LOT 2-B ZONING DEVELOPMENT PLAN**

- a. MARC 2010-2: BRIGHTON ANIMAL CLINIC, LLC (8/26/10)* - petition for a zone map amendment from an Interchange Service Business (B-5P) zone to a Neighborhood Business (B-1) zone, for 1.50 net (1.85 gross) acres, for property located at 1875 Pleasant Ridge Drive. A conditional use permit has also been filed in conjunction with this request.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 8) recommends Highway Commercial/Interstate Commercial (HC) future land use for the subject property. The petitioner proposes the rezoning in order to construct a 6,000 square-foot small animal clinic, with a drive-through facility, and associated off-street parking.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reasons:

1. The requested Neighborhood Business (B-1) zoning is appropriate, and the Interchange Business (B-5P) zoning is inappropriate at this location, for the following reasons:
 - a. The subject property is the only property zoned for business use on the east side of Timber Creek Drive and on the south side of Pleasant Ridge Drive, making the property isolated with regard to interstate travelers.
 - b. The current B-5P zoning permits a very limited number of principal uses, although those permitted uses are generally more intense than the proposed B-1 zone would allow. The B-1 zone does not permit uses such as hotels and motels, campgrounds and overnight trailer facilities, cocktail lounges, nightclubs or discotheques, which are all permitted in the B-5P zone.
 - c. The subject property, which is bounded on two sides by single-family residential land use, is more compatible with neighborhood business than highway commercial land uses.
 - d. The B-1 zone is an appropriate step-down or transition zone between the more intense business zoning across Pleasant Ridge and Timber Creek Drives (B-5P zoning and uses) and the single-family homes to the south and east of this location.
 2. This recommendation is made subject to approval and certification of ZDP 2010-36: Man O' War, Unit 2, Section 1, Lot 2-B, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. REQUESTED CONDITIONAL USE
1. Animal hospital or clinic.

The Staff Recommended: **Approval**, for the following reasons:

- a. A small animal hospital or clinic at this location should not adversely affect the subject or surrounding properties. All activities will be confined to the interior of the building, all exterior walls will be soundproofed and adequate off-street parking is planned for this business.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Should the property be re-zoned to B-1, it shall be developed according to the submitted Preliminary Development Plan, or as further amended by the Planning Commission via a Final Development Plan.
 2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the small animal hospital/clinic.
 3. All exterior walls of the building shall be completely soundproofed.
 4. All cages, pens and kennels shall be located inside of the building, and used only for the purpose of assisting in treatment of medical conditions, and not for boarding.
- c. ZDP 2010-36: MAN O' WAR, UNIT 2, SECTION 1, LOT 2-B (8/26/10)* - located at 1875 Pleasant Ridge Drive.
(Vision Engineering)

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory information.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Denote name of developer on plan.

* - Denotes date by which Commission must either approve or disapprove request.

8. Denote final record plat name for adjoining properties.
9. Denote typical parking dimensions.
10. Denote construction access location.
11. Denote 15' landscape buffer as per the final record plat.
12. Label proposed height of building on plan.
13. Dimension and label building lines and easements as per the final record plat.
14. Addition of property boundary, bearings and dimensions per the final record plat.
15. Denote additional sidewalk access from building to public sidewalk in the right-of-way.
16. Denote: Additional screening for dumpster locations will be required at the time of the final development plan.
17. Discuss proposed access to Pleasant Ridge Drive.

Zoning Presentation: Ms. Wade presented the staff report on the map amendment request, briefly orienting the Commission to the location of the subject property at the southeast corner of Pleasant Ridge Drive and Timber Creek Drive. She said that Pleasant Ridge Drive is a collector street that runs through the southeastern area of the Hamburg development. The subject property was rezoned to B-5P in the late 1980s, and has been vacant in that zoning category since that time. Some of the nearby uses include: a restaurant, gas station, hotel, and car wash; as well as some industrial and B-3 zoning along Bryant Road to the south and west. The subject property is also bordered by single-family residential land use and zoning to the south and east.

Ms. Wade stated that the petitioner is proposing to construct a small animal clinic on the subject property, which would require a conditional use permit in addition to the proposed zone change. She displayed for the Commission several aerial photographs of the subject property and surrounding area, noting the existing fences on the property that provide a buffer for the adjacent residential area.

Ms. Wade said that the 2007 Comprehensive Plan recommends Highway Commercial and Interchange Commercial land use for the subject property. These land uses have two definitions in the Comprehensive Plan: the first includes properties that are located at interchanges, and the second includes properties at any other location within the Urban Service Area. In this instance, the petitioner contends that, since the subject property is not located at an interchange, the definition that allows additional uses not geared toward motorists would be more appropriate. She said that the staff agrees with that assessment. The staff also agrees that the proposed B-1 zone is more appropriate at this location than the existing B-5P zone, and is therefore recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, further orienting the Commission to the location of the subject property. He stated that the petitioner is proposing to construct one 6,000 square-foot building of one story in height, with 35 associated parking spaces. The petitioner is also proposing accesses to the subject property on both Pleasant Ridge Drive and Timber Creek Drive, a drive-through window, and landscape buffering along the boundary with the residential properties. Mr. Martin noted that the proposed B-1 zone requires a 20-foot front yard setback; the subject property is platted with a 20-foot setback along the entire perimeter, along with an existing landscape buffer. The Subdivision Committee reviewed the plan, and recommended approval, subject to the conditions as listed on the agenda.

With regard to condition #17, which is a discussion item, Mr. Martin said that the staff originally had concerns about the proposed location of the access to Pleasant Ridge Drive and its offset with Justice Drive. The petitioner submitted a revised plan, which depicted that access point approximately 15 feet from the location originally proposed. On the original submission, that access was proposed to be less than 100 feet from the intersection. The access to Timber Creek Drive, a residential street, is generally discouraged under the current Subdivision Regulations. The revised plan depicts that access approximately 115 feet from the intersection, which the staff believes is much more appropriate. Mr. Martin said that, after some discussions with the petitioner and staff of the Division of Traffic Engineering, it was determined that traffic circulation on the site could be improved by relocating the access, moving the proposed dumpster location, and changing the parking spaces to angled parking. The circulation pattern is now proposed to be one-way only, which the staff believes will better serve the proposed drive-through window. Since the subject property is located adjacent to a large residential area, the staff was also concerned that traffic problems could be exacerbated by having two new access points located so near the intersection of Pleasant Ridge Drive and Timber Creek Drive. Based on the revised plan, the staff believes that parking and circulation on the subject property will be much improved, and that condition #17 could now be deleted.

Commission Questions: Mr. Owens asked how far the proposed access to Pleasant Ridge Drive is located from the intersection. Mr. Martin responded that that access is now proposed to be located approximately 115 feet from the intersection.

Mr. Holmes asked if the required landscape buffer will be more detailed in the final development plan for the subject property. Mr. Martin responded that that buffer is platted, so the staff asked that it be added to this plan. It will also be required to be shown on the final development plan. Mr. Holmes asked at what point it would be decided what type of buffer will be provided. Mr. Martin answered that the petitioner will be required to provide a landscape buffer according to the provisions of Article 18 of the Zoning Ordinance.

* - Denotes date by which Commission must either approve or disapprove request.

Conditional Use Presentation: Mr. Sallee presented the staff report for the conditional use request, noting that the Zoning Ordinance allows the Planning Commission to hear and consider conditional use permits that are filed in conjunction with zone change requests. The Zoning Ordinance states that, in the proposed B-1 zone, an animal clinic is a conditional use. However, the Ordinance also states that such a use must meet several requirements in order to allow the use: all exterior walls must be completely soundproofed; all animal pens must be within the principal building; and the facility needs to be used for medical treatment of small animals. All of those conditions are inherent in this conditional use request.

Mr. Sallee stated that the staff's review of this conditional use request indicates that, since all of the animals will be cared for inside the building and there will be no exterior pens, the subject property is fairly well suited for the proposed use. The setbacks of the building and the parking area are generous in relation to the adjoining residential properties, and the site is already fenced along that boundary. In addition, as Mr. Martin explained in his presentation, additional landscaping can be considered at the time of the final development plan should the rezoning be approved. The staff believes that the design features of the site have been presented so as to minimize the impact of the proposed animal clinic on the surrounding properties. The staff, therefore, has recommended approval of this conditional use permit, for the reasons as listed in the staff report and on the agenda, subject to the conditions as listed.

Commission Questions: Mr. Cravens asked what level of soundproofing would be provided for the building on the subject property. Mr. Sallee answered that no detail had been provided about soundproofing at this time, and noted that that information is generally provided to the Division of Building Inspection at the time of building and occupancy permits. That Division is very familiar with this portion of the Zoning Ordinance, and is aware of all the particulars with regard to drywall thickness, window treatments, etc. Mr. Sallee said that, should the Commission choose to do so, they could reconsider that issue at the time a final development plan is filed for this property.

Petitioner Representation: Nick Nicholson, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff recommendations with regard to the proposed zone change, development plan, and conditional use request.

Zoning Action: A motion was made by Mr. Brewer, seconded by Mr. Holmes, and carried 6-0 (Copeland, Paulsen, and Roche-Phillips absent), to approve MARC 2010-2 and the associated conditional use request, for the reasons provided by staff, subject to the four conditions as recommended by staff.

Development Plan Action: A motion was made by Mr. Brewer, seconded by Mr. Holmes, and carried 6-0 (Copeland, Paulsen, and Roche-Phillips absent) to approve ZDP 2010-36, subject to the first 16 conditions as listed on the agenda, deleting condition #17.

2. VIRGINIA BATES ZONING MAP AMENDMENT & H. HOWARD & CAROLYN LEE THOMAS PROPERTY ZONING DEVELOPMENT PLAN

- a. MARV 2010-4: VIRGINIA BATES (8/26/10)* - petition for a zone map amendment from a Light Industrial (I-1) zone to a Highway Service Business (B-3) zone, for 0.3565 net (0.4943 gross) acre, for property located at 635 E. New Circle Road. A dimensional variance is also being requested at this location.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 8) recommends Highway Commercial/Interstate Commercial (HC) future land use for the subject property. The petitioner proposes maintaining the existing structure and parking area, and changing the use of the property to a retail sales and beauty shop establishment (body piercing).

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested Highway Service Business (B-3) zone is in agreement with the 2007 Comprehensive Plan's land use recommendation of Highway Commercial/Interstate Commercial (HC) for the subject property. The requested B-3 zone is also consistent with the existing zoning in the immediate area.
2. This recommendation is made subject to approval and certification of ZDP 2010-34: H. Howard and Carolyn Lee Thomas Property, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses are to be prohibited for the subject property via conditional zoning:
 - a. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments and sexual entertainment centers.
 - b. Cocktail lounges and nightclubs.
 - c. Kennels.
 - d. Outdoor loud speakers or music.

* - Denotes date by which Commission must either approve or disapprove request.

These use restrictions are appropriate and necessary at this location to ensure that the proposed commercial reuse of the subject property will not be to the detriment of either the nearby residential uses in this area or Yates Elementary School.

b. REQUESTED VARIANCE

1. Reduce the required property perimeter screening along the northwest and northeast property lines from 15 feet to 0 feet.

The Staff will report at the hearing.

c. ZDP 2010-34: H. HOWARD & CAROLYN LEE THOMAS PROPERTY (8/26/10)* - located at 635 East New Circle Road.
(Foster – Roland, Inc.)

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Correct Planning Commission certification.
7. Correct plan title.
8. Addition of required Engineering Manual note.
9. Denote all existing easements.
10. Remove the words "employee parking" from 1 space.
11. Clarify extent of building adjacent to northwest property line.
12. Discuss plan status.
13. Discuss access and circulation.
14. Discuss vehicular use screening.

Zoning Presentation: Ms. Wade presented the staff's report on this zone change request, noting that the staff had received two letters of objection to this rezoning. She circulated those letters to the Commission members for their review.

Ms. Wade oriented the Commission members to the location of the subject property, which is located on the east side of East New Circle Road. She stated that the subject property is bounded on two sides by I-1 zoning, and on the south and southeast sides by B-3 zoning. There are some R-1D zoned properties to the north which, although not located directly adjacent to the subject property, are part of the nearby Rookwood neighborhood. Some of the uses surrounding the subject property include a new Central Bank branch, Green's automobile dealership, a large Kentucky Utilities transmission line, and Yates Elementary School, which is approximately 500 feet away. The subject property has an existing structure, which the petitioner is proposing to re-use as a body piercing and tattoo shop with retail sales, which is considered a "beauty shop" by the Division of Building Inspection. Retail Sales and beauty shop uses are principal uses in the proposed B-3 zone. Ms. Wade displayed several photographs of the subject property to further orient the Commission to the property and surrounding area, noting the areas on the property that are proposed for variances.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Highway Commercial land use for the subject property. Highway Commercial land uses, and the proposed B-3 zoning, are common in this part of New Circle Road. Therefore, the staff believes that the proposed rezoning to B-3 is in agreement with the recommendations of the Comprehensive Plan, and is compatible with the surrounding zoning. However, because of the nearby elementary school and residential zoning, the staff is recommending some conditional zoning restrictions, as listed in the staff report and on the agenda, in order to prevent the most intense and possibly detrimental land uses that are allowable in the B-3 zone. The staff and Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Ms. Gallt presented the corollary development plan, noting that the petitioner had chosen to submit it as a final development plan. The plan depicts the existing structure and the required off-street parking spaces and proposed landscape buffers. The Subdivision Committee recommended approval of this plan, subject to the 14 conditions as listed on the agenda.

Ms. Gallt noted that there were three discussion items included in the conditions for approval of this plan. Condition #13, which refers to the property access and traffic circulation, has been resolved via the use of a one-way configuration on the access points to New Circle Road. Condition #14 refers to the vehicular use area screening, which has been proposed for a variance. Ms. Gallt noted that Mr. Saltee would discuss that condition further in his report on the requested variances later in this hearing. Condition #12 refers to the staff's concern that the petitioner might not be able to meet the requirements for final development plan status for this plan. However, those issues have since been resolved.

* - Denotes date by which Commission must either approve or disapprove request.

Commission Questions: Ms. Richardson asked if condition #12 could be deleted. Ms. Gallt responded that condition #12 could be deleted, and condition #13 could be changed to read: "Resolve access and circulation."

Variance Presentation: Mr. Sallee presented the staff's report on the requested variance, using the rendered development plan to highlight the extent of the proposed variance. He noted that this variance request was filed after the Zoning and Subdivision Committee meetings on July 1st.

Mr. Sallee stated that the petitioner is requesting a variance to reduce the required perimeter property screening from 15' to 0' along its northeast and northwest property lines. Article 6 of the Zoning Ordinance allows the Planning Commission to consider variances when they are requested in conjunction with rezoning applications. As Ms. Gallt noted in her presentation, condition #14 for approval of the development plan refers to this requested variance. He said that, should the Commission choose to approve the variance request, that condition could be deleted.

Mr. Sallee noted that Article 18 of the Zoning Ordinance requires that a 15' buffer be established when a business zone adjoins an industrial zone. If the property is rezoned as requested, such a buffer would be necessary along two of the property lines. The petitioner has two options for the buffering: at a minimum, a 5' buffer is required, to consist of a solid six foot tall fence, berm, or wall. However, if one of those buffering options is not provided, the buffer must be a minimum of 15 feet in width, and must contain thick landscaping material. The petitioner has asked that neither buffer be required along the boundaries of the subject property.

Using a photograph on the overhead projector to depict the existing condition of the subject property, Mr. Sallee stated that the existing structure is constructed on the northwest property line. A portion of the property from the corner of the building to New Circle Road is encumbered with a large access easement for the electric utility. The staff believes that requiring the landscape buffer would be a hardship to the petitioner, since a portion of the building would have to be removed, and the location of the access easement would need to be re-negotiated with Kentucky Utilities. The small, unfinished addition to the rear of the existing structure is proposed to remain, and would serve as solid screening for that portion of the property. At the rear of the property, there is a large elevation change from the midpoint of the property to the industrial building on the adjoining property. There is some question as to whether or not a buffer constructed in this area would be visible from New Circle Road, given the change in elevation. The staff believes that, from a practical standpoint, any buffer constructed in that area would serve to benefit the subject property far more than the adjacent industrial use.

Mr. Sallee said that the Landscape Review Committee met earlier in the week prior to this hearing, and did not voice any objections to the extent of the proposed landscape variance. The petitioner is proposing to remove pavement and provide a landscape buffer area of varying width along the rear of the property, but is still requesting a full variance to give them the maximum amount of flexibility in augmenting the fencing and existing volunteer landscape material along that property line. The staff has recommended approval of the requested landscape variance, for the following reasons:

1. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The redevelopment of this property will be done with a minimum of physical alteration, and the existing building will remain virtually unchanged on the subject site. It is not physically possible to provide the required landscaping along the northwest property line, since the existing building is at a 0' setback and is encumbered by an access easement in favor of the adjacent utility.
2. Approval of this variance will not result in an unreasonable circumvention of the Zoning Ordinance. The purpose of the landscaping requirements contained in Article 18 is to buffer adjacent land uses. In this case, those consist of an electric transmission tower, a fenced industrial property, and a branch bank which has recently installed vehicular use screening to the southeast of the subject property.
3. The special circumstances which apply to the subject property are the aforementioned utility use to the northwest, including the need to maintain access into their adjacent easement, and the fact that the subject property slopes down from East New Circle Road to the extent that any new fencing or landscaping would have very little visibility from that roadway.
4. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant. It would require the removal of a portion of the existing building on the subject property, a renegotiation of a nearly 60-year old access easement, and a diminution of the off-street parking available to the rear of the existing structure.
5. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of Article 18 of the Zoning Ordinance. In fact, this property was developed long before those provisions were enacted, and the subject site constrained by both the odd shape of the existing building and the relatively small size of the lot.

This recommendation of approval is made subject to the following conditions:

- a. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval of this variance is null and void.
- b. Should the property be rezoned, it shall be redeveloped in accordance with the approved Zoning Development Plan, or as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
- c. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).

* - Denotes date by which Commission must either approve or disapprove request.

- d. Denote: All necessary permits shall be obtained from the Division of Building Inspection prior to occupancy.
- e. The existing access easement (DB 532, p. 503) shall be labeled and identified on the corollary Zoning Development Plan for this property.
- f. The existing "wing walls" on the northern end of the existing building shall be removed if that area is to remain for use for off-street vehicular parking.

Mr. Sallee stated, with regard to condition "e," that the access easement is noted on the development plan, but is not dimensioned. The staff believed it would be appropriate for the petitioner to clearly delineate the bounds of the easement. In conversation with the petitioner's attorney, however, the staff learned that the dimensions for that easement are undefined in the deed, so that condition could be deleted, should the Commission choose to approve the variance request. With regard to condition "f," Mr. Sallee said that the development plan suggests that two off-street parking spaces are proposed at that location on the property. Since the number of off-street parking spaces available on this site is very close to the minimum number required, the staff believes that, for safety reasons, the exterior walls on the unfinished addition would need to be removed in order to allow access to the parking spaces.

Commission Questions: Mr. Owens asked, with regard to the unfinished addition, if the staff was recommending removal of both "wing walls." Mr. Sallee answered that the staff was referring to the "wing walls" as the ones that are at an angle in the rear portion of the property, not the two exterior walls to the unfinished addition.

Mr. Owens asked if the utility easement area is part of the subject property. Mr. Sallee responded that the utility company has the right to cross the subject property in order to reach their adjacent property.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the owners of the subject property were not able to attend today's hearing, but they do support the proposed rezoning. The subject property was originally used in the 1950s for a metal shop, and it has been used in the last 10 or 15 years for automobile sales.

Mr. Murphy displayed several photographs of the subject property and surrounding area, noting the large utility transmission tower that adjoins the subject property. He said that the industrial property to the rear of the subject property contains a large, windowless warehouse building, which is surrounded by a high chain link and barbed wire fence. He also noted that, since the construction of the median on New Circle Road, access to the subject property is right-in/right-out only.

With regard to the conditions for approval of the development plan, Mr. Murphy said that most of the major issues had been addressed. Currently, the property is mostly paved, with little greenspace at the front of the building. The petitioner proposes to remove some of the existing paving, and use those areas for landscaping wherever possible. The unfinished addition to which Ms. Gallt and Mr. Sallee referred in their presentations was begun by a previous tenant, who discovered that the proposed addition was either in an easement or a required yard, and thus was unable to construct it as planned. The walls are allowed as buffering, and they provide better screening from the chain link and barbed wire fence than the required screening material. The petitioner agrees with the staff's recommendation with regard to removing the portions of the walls that will conflict with the proposed parking spaces. Mr. Murphy stated that the petitioner is in agreement with all of the staff's recommendations, and has worked with the various government divisions to resolve all of the development plan issues. One of the major reasons for the filing of the plan as a final development plan was the approval recommendations which had already been obtained from all of the required government agencies.

With regard to the proposed variance, Mr. Murphy said that there was initially some uncertainty as to whether or not a variance would be required. Usually, a landscape buffer is required to screen a less intense use. However, the Division of Building Inspection determined that, even though the adjoining property is zoned I-1 and is therefore technically more intense, a buffer should still be planted since the I-1 property is developed. The building on the subject property is constructed on one of the property lines, so it would be impossible to install a landscape buffer in that location. In addition, plantings cannot be placed along the property line where the utility easement lies, since the utility company has to be able to access their property. In the rear of the property, the petitioner proposes to install plantings wherever possible, but there is not sufficient space to allow them to meet the full extent of the Zoning Ordinance requirements. The petitioner is in agreement with the conditions for approval that the staff recommended for the variance request.

Mr. Murphy stated that, as the staff noted in their presentation, the proposed rezoning agrees with the 2007 Comprehensive Plan. The petitioner is aware that the Eastland Parkway Neighborhood Association submitted a letter of opposition to this request, in which they indicated some concerns about the proposed use of the property for a body piercing and tattoo establishment. The petitioner does not propose piercing and tattooing to be the only use of the property; she proposes to sell retail items such as clothing, jewelry, and sunglasses as well. There has also been some discussion about using a portion of the building for artistic pursuits such as photography and glassblowing. Mr. Murphy noted that the petitioner acknowledges the neighborhood association's right to object to the proposed use of the subject property, but she does not agree with the association's contention that piercing and tattooing are adult uses similar in nature to strip clubs and adult bookstores. The petitioner has agreed to the staff's proposed conditional zoning restrictions, including the prohibition of adult uses on the subject property. Mr. Murphy stated that he had spoken to the president of the neighborhood association, who noted that "they did not want another Hustler store in this area." The proposed use of the property is not intended to be in any way similar to the Hustler store, and could not be, because the proposed conditional zoning restrictions would prohibit adult uses.

* - Denotes date by which Commission must either approve or disapprove request.

Mr. Murphy stated that tattooing and body piercing facilities are inspected and regulated by the Health Department, and must meet high standards in order to meet the regulations. Under the Zoning Ordinance, these facilities are classified as beauty salons; the petitioner believes that this classification is appropriate, since many people view tattoos as a way to enhance their appearance. Mr. Murphy said that there may be many people who do not agree with that assessment, and tattoos in general; but a recent survey by the Pew Research Center indicates that 40% of all Americans between the ages of 26 and 40 have a tattoo. The *US News and World Report* stated that, in the 1990s, this type of use was the sixth-fastest-growing retail venture in the U.S. Whatever the perception of tattoos might be, there is no doubt that tattoo shops have become a major part of the business community, and of mainstream society. The petitioner contends that, since New Circle Road is a major retail corridor, it is an appropriate location for a facility that could serve up to 40% of that segment of the community.

With regard to the neighborhood association's assertion that the proposed business would be located too near existing residential uses, Mr. Murphy said that the subject property does not directly adjoin any residences. There are no residences that are located within an easy walk of the subject property; there is a large fence in the rear of the property which would prevent pedestrian access from the Eastland Parkway or Rookwood neighborhoods.

Mr. Murphy stated that, in considering a rezoning request, the Planning Commission must consider the appropriateness of the proposed zoning, not a particular use, since the use of the property could change in the future. The petitioner recognizes that the neighborhood association has the right to voice their concerns, but the property owner also has the right to use the property in an appropriate manner to serve a large portion of the population. Mr. Murphy said that the proposed rezoning is in agreement with the recommendations of the Comprehensive Plan; the staff, Zoning Committee, and Landscape Review Committee have all recommended approval; and the petitioner is in agreement with all of the conditions for approval on the zone change, development plan, and variance. The petitioner believes that the proposed use of the property would serve as a good adaptive reuse of an existing building, and would provide a service to the community.

Commission Questions: Mr. Owens asked Mr. Murphy to explain the proposed landscape buffering, particularly along the back and right sides of the property. Mr. Murphy answered that the petitioner is proposing to remove three feet of paving from approximately the midpoint of the rear of the property and install plantings to extend to the right-hand side of the property. The petitioner has not yet determined what species of trees and plantings will be used.

Mr. Owens asked what the hours of operation will be for the piercing and tattoo facility. Mr. Murphy responded that the petitioner estimates the hours of operation to be from 10 a.m. until 9 p.m.

Mr. Cravens asked if the proposed facility will be a new business. Mr. Murphy answered that the petitioner has worked for other establishments, but this would be a new business.

Citizen Support: No citizens were present in support of this request.

Citizen Objection: Eleanor Leonard, 1806 Charleston Drive, was present representing the Eastland Parkway Neighborhood Association. She stated that the neighborhood association had also submitted a letter of objection from its president, Loys Mather, and asked that the Planning Commission read and consider their concerns.

Ms. Leonard said that the Eastland Parkway Neighborhood Association is concerned about the proposed rezoning of the subject property because it includes all of the area up to New Circle Road and the former rail line as part of the neighborhood. The neighborhood association is concerned that residents could easily access the subject property on foot via the barricade at Kilkenny and Sunshine Lane. The association considers one of its primary responsibilities to be ensuring that the neighborhood does not decline, and they believe that the proposed tattoo and piercing establishment could contribute to such a decline.

Ms. Leonard stated that the neighborhood association has three primary objections to the proposed rezoning of the subject property: first, the association does not believe that a tattoo and piercing business is conducive to their family-oriented neighborhood, which includes many children; second, they believe that there is no compelling reason for rezoning the property to B-3 in order to accommodate a tattoo shop, since there are several such shops in the vicinity of the subject property; and third, if the property is rezoned to B-3 without conditional zoning restrictions, they are concerned about the possible negative impact on Yates Elementary School, particularly with regard to the possibility of adult uses locating there.

Ms. Leonard concluded by asking that, if the Commission should choose to rezone the subject property to B-3, they would impose the proposed conditional zoning restrictions in order to protect the Eastland Parkway neighborhood from any additional adult uses in the area.

Karen Kryscio, 1602 Martha Court, asked that the Planning Commission members consider the impacts of the proposed tattoo and piercing establishment on the children in the Eastland Parkway neighborhood. She said that the apartments on Martha Court and Jennifer Road are very accessible to the subject property, and the residents do not believe that children should be associated with such a business.

* - Denotes date by which Commission must either approve or disapprove request.

Petitioner Rebuttal: Mr. Murphy stated that the petitioner respects the members of the neighborhood association, but has a different view on the possibility of the proposed use having a negative impact on the neighborhood. The petitioner contends that it is the responsibility of parents to make decisions for children, and direct them as to what type of behavior is expected of them as they grow up. Mr. Murphy noted that it is illegal in Kentucky for anyone under the age of 18 to get a tattoo, unless written, notarized consent from a parent or guardian is provided. The petitioner would not be allowed to continue in business if those requirements were not met.

With regard to the objectors' contentions that there are already several such businesses in the area, Mr. Murphy stated that it is not the role of zoning to regulate economic competition. There are several instances of case law around the country which support the practice of zoning based on appropriateness, rather than the regulation of competition. The subject property is currently vacant, and the owner has been attempting for some time to sell it under the existing zoning category, with no success. The size of the property, and the existing building, is no longer sufficient for an industrial use. Over the years, the property evolved into a "default" use of used automobile sales, but several such businesses were not successful in this location.

Mr. Murphy stated that the proposed piercing and tattoo establishment is not an adult use, and is not considered as such under the Zoning Ordinance. The petitioner has willingly agreed to the imposition of a conditional zoning restriction prohibiting adult uses on the property, so that any such uses attempting to locate there would require a zone change to remove that restriction.

The petitioner contends that the major issue with the neighborhood association is a "philosophical difference in opinion." Mr. Murphy stated that the petitioner contends that it is the right of adults to get a tattoo if they so choose, and noted that the decision before the Commission today is the appropriateness of the proposed B-3 zoning, not any particular use. He also noted that, as part of the Technical Committee process, this plan was reviewed by a member of the Police Department and signed off on with no proposed changes.

Citizen Rebuttal: Ms. Kryscio recommended that Mr. Murphy research the regulations with regard to tattoos, since she believes that the operation of tattoo shops is regulated by the state, rather than the local, health department. The members of the Eastland Parkway Neighborhood maintain that children should not be exposed to or associated with such a business.

Mr. Murphy stated that the county health department regulates tattoo shops in Fayette County, with two surprise inspections each year.

Staff Rebuttal: The staff did not have any rebuttal comments.

Commission Questions: Mr. Owens stated that he was concerned about the concrete walls at the rear of the existing structure, and asked if they were allowable and/or if a building permit had been issued. He added that he believed that they should be removed. Mr. Sallee answered that such walls are permitted as an option for landscape screening, but he was not sure if a building permit had been issued for the construction of the "interrupted addition." Often in such cases, a financing or permitting issue interrupts construction. Mr. Sallee noted that the Commission has the ability to require the walls to be removed; if they should choose to make that decision, they should do so at this meeting, as this is a final development plan proposed for the subject property.

Mr. Owens asked Mr. Murphy if the petitioner would be agreeable to removing the walls. Mr. Murphy stated that the walls have served as screening for the subject property, since the adjoining utility and car lot properties usually do not maintain their grass, etc. However, the applicant would be willing to remove the walls if the Commission would prefer for them to be removed.

Mr. Owens stated that he appreciates the concerns of the members of the neighborhood association, particularly with regard to children, but he believes that the responsibility for those children lies with their parents. He believes that the proposed use of the property would be a legitimate business, licensed under the appropriate county health authority. Mr. Owens noted that he would prefer that the petitioner remove the walls at the rear of the building in order to provide a safer, more open atmosphere.

Ms. Richardson asked for clarification with regard to Mr. Murphy's assertion that the Division of Police had reviewed the development plan for the property and had indicated that they did not have concerns. Mr. Sallee answered that he was unsure whether a member of the Division of Police staff had attended the Technical Committee meeting last month and reviewed the development plan. Mr. Murphy submitted a printout of the PlanTracker program, which indicated that the Division of Police had signed off on the development plan; however, he was not aware if the wall had been reviewed in particular, or if the staff member had simply reviewed the plan as a whole.

Zoning Action: A motion was made by Mr. Owens, seconded by Mr. Brewer, and carried 5-1 (Holmes opposed; Copeland, Paulsen, and Roche-Phillips absent) to approve MARV 2010-4, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 6-0 (Copeland, Paulsen, and Roche-Phillips absent) to approve the requested variance, for the reasons provided by staff, subject to the conditions as listed in the staff report, deleting item "e."

Development Plan Action: A motion was made by Mr. Owens, seconded by Mr. Wilson, and carried 6-0 (Copeland, Paulsen, and Roche-Phillips absent) to approve ZDP 2010-34. subject to the first 11 conditions as listed on the agenda; deleting #12; changing #13 to read: "Resolve access and circulation;" adding a new condition to require the removal of the concrete block walls behind the building; and adding a new condition to denote the conditional zoning restrictions.

VI. COMMISSION ITEMS

- A. INITIATION OF A TEXT AMENDMENT FOR ALLOWABLE TRANSIT STOP PARKING REDUCTIONS** – Mr. Saltee stated that the staff had presented this item to the Planning Commission at their work session one week prior to this hearing, and that an updated draft was distributed to the members. He said that the proposed text amendment would allow consideration for a parking reduction of up to 10% for big-box retail developments that install Park & Ride lots on their property. If the Commission were to initiate this text amendment today, the staff would begin preparing the required notification letters to the more than 250 registered neighborhood associations, and would schedule this item for an upcoming zoning public hearing.

Action: A motion was made by Mr. Brewer, seconded by Mr. Cravens, and carried 6-0 (Copeland, Paulsen, and Roche-Phillips absent) to initiate a text amendment to Article 16-10 of the Zoning Ordinance.

- VII. STAFF ITEMS** – No such items were presented.

- VIII. AUDIENCE ITEMS** – No such items were presented.

IX. MEETING DATES FOR AUGUST, 2010

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	August 5, 2010
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	August 5, 2010
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	August 12 2010
Work Session , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	August 19, 2010
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	August 25, 2010
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	August 26, 2010

- X. ADJOURNMENT** – There being no further business, Chairwoman Richardson declared the meeting adjourned at 3:05 p.m.

Carolyn Richardson, Chair

Mike Owens, Secretary